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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MARCOS ALFREDO GARCIA,

Defendant and Appellant.

2d Crim. No. B204833  
(Super. Ct. No. CR48714C)  
(Ventura County)

Appellant Marcos Alfredo Garcia was charged with two counts of assault with a firearm (Pen. Code, § 245, subd. (a)(2))<sup>1</sup> and street terrorism (§ 186.22, subd. (a)). It was alleged that appellant committed both assaults with personal use of a firearm (§ 12022.5, subd. (a)) for the benefit of a street gang (§ 186.22, subd. (b)(1)). Pursuant to a plea bargain, defendant pleaded guilty to one count of assault with a firearm and admitted the enhancing allegations. All other charges and allegations were dismissed. The trial court struck the gang enhancement for sentencing purposes and sentenced appellant to five years in state prison, consisting of the low term of two years for the assault and three years for the personal use enhancement.

Garcia appeals from the trial court's denial of his petition for writ of error *coram nobis* which he filed seven years after entry of judgment. We dismiss the appeal.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

## FACTS AND PROCEDURAL BACKGROUND

The trial court entered judgment on July 31, 2000. Appellant did not request a certificate of probable cause or file a timely appeal from the judgment. In March of 2007, after being deported and then incarcerated for illegal reentry, appellant filed with the trial court a request for records and transcripts, which was denied. On April 9, 2007, he filed in the trial court a "notice of appeal" which the court rejected as untimely because it was filed more than 60 days after entry of judgment. (Cal. Rules of Court, rule 8.308.)

On November 26, 2007, appellant filed in the trial court a petition for writ of error *coram nobis* contending that his trial counsel rendered ineffective assistance because counsel represented both appellant and his brother, did not prove that appellant acted in self-defense, did not move to suppress evidence that was obtained from a vehicle without a warrant, did not advise appellant against incriminating himself and did not advise the court of appellant's mental instability. The trial court denied the petition on the grounds that it was untimely and that the writ of error *coram nobis* is not available for claims of ineffective assistance of counsel. Appellant filed a notice of appeal from the order. The record on appeal was filed. We appointed appellate counsel.

On appeal, appellant concedes that ineffective assistance of counsel is not grounds for a petition *coram nobis*. However, he contends that dual representation deprived him of his right to counsel altogether and warranted an order to show cause in response to his petition. He argues that his petition was timely because he did not have access to the California legal system while he was in El Salvador and discovery of his claim required time for critical thinking.

## DISCUSSION

Appellant's contentions are barred because they go to the validity of his guilty plea, and he failed to request a certificate of probable cause within 60 days after the judgment was rendered. (§ 1237.5; Cal. Rules of Court, rule 8.304(b).)

No appeal may be taken from a judgment of conviction upon a plea of guilty unless the defendant files within 60 days of judgment a sworn written statement

showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings and the trial court issues a certificate of probable cause for appeal. (§ 1237.5; Cal. Rules of Court, rule 8.304.) The only exceptions to this rule are for appeals based solely upon grounds (1) occurring after entry of the plea which do not challenge its validity or (2) involving a search and seizure, the validity of which was contested pursuant to section 1538.5. (*People v. Panizzon* (1996) 13 Cal.4th 68, 74-75; Cal. Rules of Court, rule 8.304(b).) Appellant's challenge to his conviction is based upon neither exceptional ground. The certificate of probable cause requirement is to be interpreted in a strict manner. (*People v. Mendez* (1999) 19 Cal.4th 1084, 1098.)

An appellant who has failed to obtain a certificate of probable cause may not circumvent section 1237.5 by labeling his attack upon the validity of his plea as a petition for writ of *coram nobis*. (*People v. Chew* (1971) 16 Cal.App.3d 254 (*Chew*).) Appellant attempts to distinguish *Chew* because the appellant in *Chew* filed his petition for writ of *coram nobis* in the appellate court, not in the trial court. *Chew's* holding applies with equal force here where appellant has employed the petition and an appeal from its denial in order to circumvent the requirements of section 1237.5.

A certificate of probable cause was required for this challenge to the validity of the plea and we must order dismissal of the appeal. "In the absence of full compliance and a certificate of probable cause, the reviewing court may not reach the merits of any issue challenging the validity of the plea, but must order dismissal of the appeal. [Citation.] Our Supreme Court has expressly disapproved the practice of applying the rule loosely in order to reach issues that would otherwise be precluded." (*People v. Puente* (2008) 165 Cal.App.4th 1143, 1149, citing *People v. Mendez, supra*, 19 Cal.4th at pp. 1098-1999.) "Where a criminal appellant has not complied with rule 31(d), either by obtaining a certificate . . . or by stating noncertificate grounds in the notice of appeal . . . , the appeal is not 'operative.' No record should be prepared and no briefing undertaken for such an inoperative appeal, which is subject to dismissal on the respondent's or the court's own motion. Even when the record has mistakenly been prepared and briefs filed, the appellant should have no expectation that the inoperative

appeal will be heard on its merits." (*People v. Jones* (1995) 10 Cal.4th 1102, 1108, fn. omitted, overruled on a different point by *In re Chavez* (2003) 30 Cal.4th 643, 656.)

The appeal is dismissed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

PERREN, J.

Edward F. Brodie, Judge  
Superior Court County of Ventura

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